

June 24, 2009

# TECHNICAL STAFF REPORT

*Petition Accepted on March 26, 2009*

## *Planning Board Meeting of July 8, 2009*

## ***Zoning Board Hearing to be scheduled***

**Case No./Petitioner:** ZB 1080M – High’s Of Baltimore, Inc. and LDG, Inc.

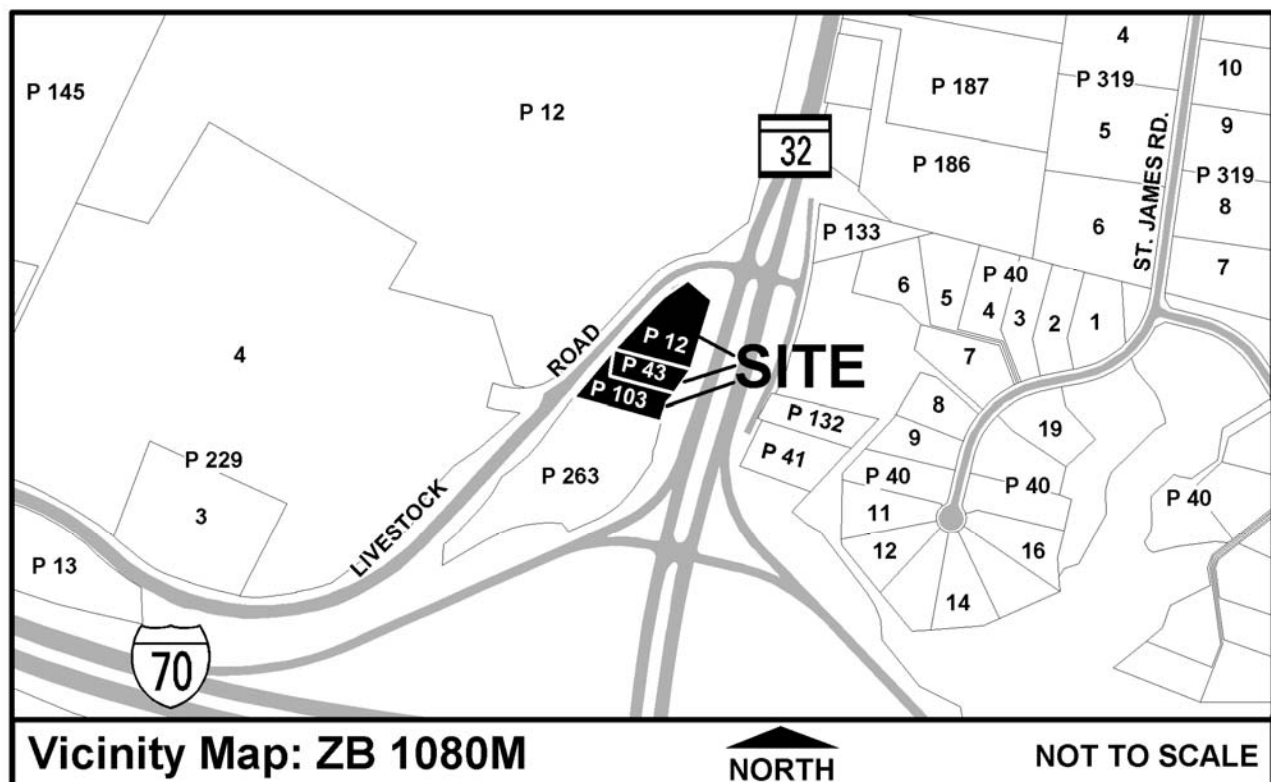
Location: Fifth Election District  
East side of Livestock Road approximately 155 feet southwest of MD 32  
Tax Map 15, Grid 5, Parcels 43, 102 and Part of 12;  
12701 and 12705 Livestock Road (the "Property")

Area of Site: 2.51 acres

Current Zoning: RC-DEO Proposed Zoning: BR

**Department of Planning and Zoning Recommendation:**

## DENIAL



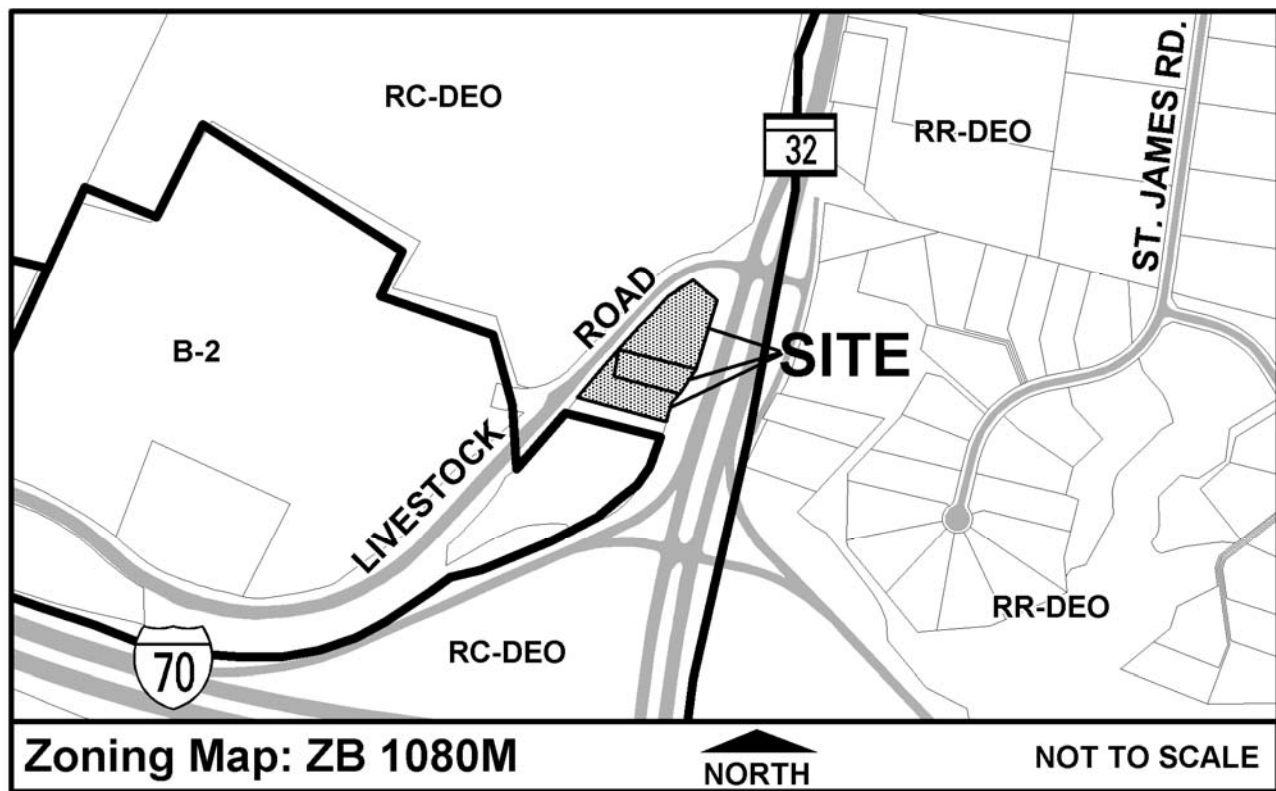
**I. DESCRIPTION OF PROPOSAL**

- **The Petitioner proposes a Zoning Map Amendment to rezone the Property from the current RC-DEO district designation to the BR (Business: Rural) district.**

The BR District is a floating zone in which the evaluation is based upon compliance with certain criteria and the approval is tied to a specific Preliminary Development Plan. Such a case is not subject to the standard piecemeal map amendment factors of substantial change in the character of the neighborhood, or mistake in zoning.

- **As background to the request, in the Narrative in Support of Petition (the "Narrative"), the Petitioners explain that the High's Store and gasoline station located on MD 144 to the west of MD 32 is to be closed in the future due to a condemnation of the land by the State Highway Administration for road improvements associated with the widening of MD 32.**

Due to this store closing, the Petitioners request that the Property be rezoned to BR in order to develop it for a new High's convenience store and gasoline station to replace the MD 144 store. Both convenience stores and gasoline stations are uses permitted as a matter of right in the BR District.



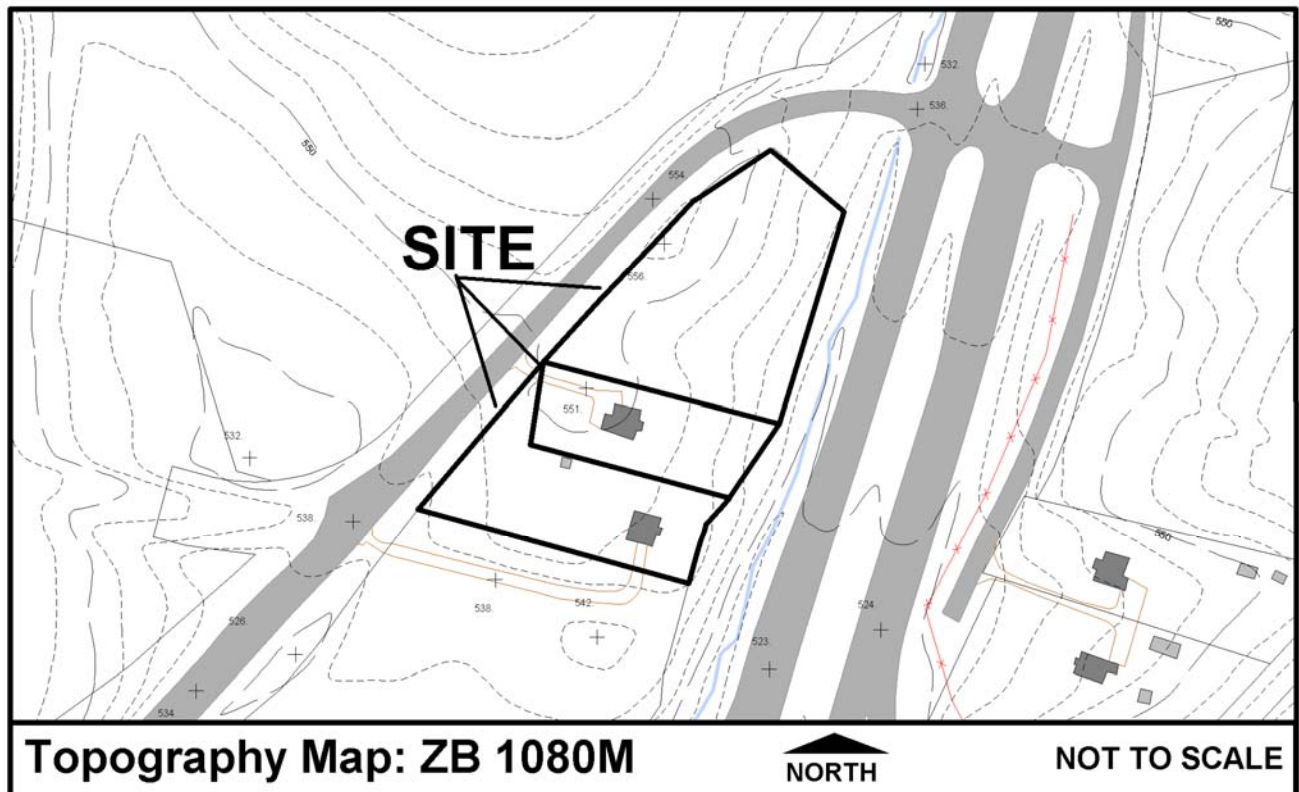
**I. DESCRIPTION OF PROPOSAL**

- **The Petitioners state that the “Property cannot be used for residential purposes in its current zoning...” because of its location near MD 32, I-70, and the B-2 zoned properties to the west.**

However, the Petitioners do not appear to address the issue as to whether the Property has any potential for other uses permitted in the RC District, either by right or through the Conditional Use process.

- **As required for a BR District map amendment request, the Petitioners submitted a Preliminary Development Plan for the Property (the “High’s PDP”) . If the BR District is granted, the High’s PDP details the intended development of the Property that the Petitioners would be required to follow.**

There would be two entrances into the site from Livestock Road; one would be approximately centered on the road frontage, the other would be slightly to the northeast, in alignment with a street in a proposed residential development across the road.



## **I. DESCRIPTION OF PROPOSAL**

The principal structure would be a building, approximately 50 feet by 70 feet, or 3,500 square feet, that would be located to the southwest of the entrance driveways, and approximately 62.5 feet from the south lot line. This building would be used for a convenience store. To the northeast of this building would be a fueling area, consisting of three islands, six multiple-product dispensers (two per island), and a canopy that would be approximately 48 feet by 84 feet. Slightly further to the northeast on the perimeter of the paved area would be a pad for a kerosene dispenser and a pressurized air machine.

A proposed minor structure would be a "Farmer's Market Stand", measuring approximately 12 feet by 12 feet, which is shown to be to the southwest of the main building, adjacent to a parking lot. The Petitioners state that this structure is to be used for "...the seasonal sale of locally grown fruits and vegetables." A trash receptacle enclosure would be adjacent to the east side of the main building.

There would be 22 parking spaces in the development, arranged in seven regular parking spaces and one handicapped parking space in front of the store, and 14 regular parking spaces in a parking lot to the west and southwest of the store. Outdoor pole lights located around the perimeter of the paved area would illuminate the site, as well as the lights typically provided under canopies.

- **A separate landscape plan shows a very basic landscaping treatment with oak trees and shrubs. On both the landscape plan and the High's PDP, there is a line with arrows labeled "Trees to Remain" adjacent to Livestock Road in the northern area of the Property, but the actual meaning of this line is unknown.**

Without clearly depicting a boundary showing the limits of clearing and grading, the true extent of trees to be retained cannot be determined, and the line shown could be misleading. It is recommended that the Petitioners provide better information on this issue.

- **At the end of the Narrative, the Petitioners include a hypothetical evaluation of the Section 131.N.25 Conditional Use criteria for the Gasoline Service Station use category, using the development proposed on the Property as an example.**

It should be stressed that the Section 131.N.25 criteria only apply to Conditional Use applications for gasoline service stations in the B-2, SC, M-1, M-2 and PEC districts, and as such have no bearing on or relevance to a map amendment request for the BR District. These criteria should therefore be ignored and not given any consideration whatsoever.

## **II. ZONING HISTORY**

### **A. Subject Property**

- **In the 1961 Comprehensive Zoning Plan, the Property was zoned R-40. As with much of the western area of the County, the 1977 Comprehensive Zoning Plan placed the Property in the R (Rural) District, and this was continued in the 1985 Comprehensive Zoning Plan. The Property became zoned RC-DEO in the 1992 Comprehensive Zoning of Western Howard County (ZB 926R&M), and this was retained in the 1993 Comprehensive Zoning Plan.**
- **In the 2004 Comprehensive Zoning Plan, the Parcel 103 portion of the Property was known as Amendment No. 15.25, which was a request to rezone the Property from RC-DEO to B-2. Both the Department of Planning and Zoning and the Planning Board recommended against rezoning the Property to B-2, and ultimately the Property remained zoned RC-DEO.**

### **B. Adjacent Properties**

- **All the adjacent properties that are zoned RC-DEO have similar zoning histories to the Property, with the exception that none were specific amendment subjects of the 2004 Comprehensive Zoning Plan.**
- **The adjoining property to the south, and the land to the west on the north side of Livestock Road, were rezoned from RR (Rural Residential) to B-2 in 1959 in ZB 231. This B-2 zoning has been maintained since that time.**

## **III. BACKGROUND INFORMATION**

### **A. Site Description**

- **The Property is an irregularly-shaped site consisting of three parcels, and it is a “peninsula” in its location between Livestock Road and MD 32 to the southwest of the intersection of those two roads.**

The northern Parcel 12 portion of the Property is wooded and unimproved. Parcel 43 and Parcel 103 are somewhat more open, and were each improved with single-family detached dwellings, but these apparently were demolished. The highest point on the Property is in the northwestern area, adjacent to Livestock Road. From this point the elevation of the Property drops to the east, eventually dropping approximately 26 feet to the east property line. Beyond the Property, the land in the MD 32 right-of-way drops even further in elevation to the southbound lanes of that road.

### **III. BACKGROUND INFORMATION**

#### **B. Vicinal Properties**

- **The RC-DEO property across Livestock Road to the north and northwest of the Property is currently a farm, but is also the site of a 22 cluster-lot residential subdivision known as Terrapin Creek (F-07-086).**

A copy of the cover sheet for the Terrapin Creek construction plans is attached for information on how this proposed development relates to the Property.

- **To the east of the Property is the wide right-of-way for MD 32. Beyond MD 32 to the east is a wooded area and two residential parcels.**
- **The adjoining property to the south is zoned B-2 and is wooded and unimproved.**

#### **C. Roads**

- **Livestock Road has two travel lanes and a variable pavement width within a proposed 80 foot wide right-of-way. A posted speed limit was not observed.**
- **The estimated sight distance from the approximate location of the proposed driveway entrance is over 700 feet to the southwest, but is difficult to estimate to the northeast due to the existing vegetation, and the curve and drop in elevation of Livestock Road in that direction.**

Precise sight distance measurements may only be determined through a detailed sight distance analysis, however.

- **There is no traffic volume data available for Livestock Road.**

#### **D. Water and Sewer Service**

- **The Property is not in the Metropolitan District and is within the No Planned Service Area according to the Geographic Information System Maps.**

The proposed development on the Property would be served by private water and septic facilities. The potential locations for a well are in the southwestern area of the site, while the septic area is to be in the northeastern area.

#### **E. General Plan**

- **The Property is designated Rural Conservation on the Policies Map 2000-2020 of the 2000 General Plan.**
- **Livestock Road is depicted as a Local Road on the Transportation Map 2000-2020 of the 2000 General Plan.**

### **III. BACKGROUND INFORMATION**

#### **F. Agency Comments**

- **See attached comments on the proposal from the following agency:**

1. State Highway Administration

- **The following agencies had no objections to the proposal:**

1. Department of Recreation & Parks
2. Department of Inspections, Licenses and Permits

#### **G. Adequate Public Facilities Ordinance**

- **The petition is subject to the Adequate Public Facilities Ordinance. A site development plan for the proposed development is subject to the requirement to pass the test for adequate road facilities.**

### **IV. EVALUATIONS AND CONCLUSIONS**

#### **A. Evaluation of the Petition Concerning Section 117.1.B (Criteria for a BR District)**

- **The Property is within the No Planned Service Area, and therefore the petition complies with Section 117.1.B.1.**
- **Livestock Road appears to be a low traffic volume local road, so the two proposed driveway entrances on Livestock Road should be safe. The east side of the Property adjoins MD 32, an arterial highway, and the northernmost proposed driveway access is within 400 feet of MD 32. Based upon an evaluation of only the Livestock Road entrances, the petition could be found to be in compliance with Section 117.1.B.2. For an examination of how the proposed BR District would relate to the other road principally providing access to the site, MD 32, please refer to the evaluation of Section 117.1.G.3.c. below.**
- **Although there is a residential development proposed for the land across Livestock Road to the north and northwest, this residential development does not exist at this time, and the compatibility test of Section 117.1.B.2. concerns existing uses only. In terms of the nearby vicinity, there are no existing land uses to compare to the proposed BR District.**

#### **B. Evaluation of the Petition Concerning Section 117.1.G.3. (Zoning Board findings for a BR District)**

- **The stated purpose of the BR District is to "...allow the development of businesses which will support the agricultural industry, serve the needs of the rural residential and farming communities, and provide opportunity for a combination of business and industrial uses not otherwise permitted in the rural areas of the County."**

#### IV. EVALUATIONS AND CONCLUSIONS

The proposal for a BR District with principal convenience store and gasoline station uses can be viewed as serving some needs of the rural residential community, and are uses not otherwise permitted in the rural areas, except for those instances where there is a property with zoning that would allow for Conditional Use approval, such as the B-2 parcel that adjoins the south side of the Property.

For this BR District proposal, the main question for consideration in evaluating Section 117.1.G.3.a. is whether the proposed uses support the agricultural industry to any significant extent. Certainly, the workers in this industry have needs for convenience items and fuel in the same manner as any person, but these needs may be fully met by other existing commercial facilities.

The Petitioners do propose a farm stand use in an effort to improve the agricultural-support aspect of this BR District, but it is small. Ultimately, it seems unnecessary to create a BR District in this location with the uses proposed when there is existing B-2 zoned land adjoining the site. If a convenience store use or a gasoline station use were services needed in the vicinity, a convenience store could be developed on B-2 land by right, and a gasoline station would need only Conditional Use approval, not a zoning change.

- **Please refer to the evaluation of Section 117.1.B. above.**
- **Livestock Road is a no-outlet local road, and all of the vehicle traffic on Livestock Road comes from MD 32, so MD 32 would be a road providing vehicle access to the proposed BR District site. The intersection of Livestock Road and MD 32 is inappropriate to serve the business-related traffic likely to be generated by the proposed uses.**

This intersection has no traffic signal. Particularly in the mornings on work days, both the speed and volume of traffic traveling south past Livestock Road on MD 32 are quite high, and even attempting to make a right-hand turn from Livestock Road onto MD 32 can be extremely difficult, and a left-hand turn perhaps not possible. Given the current conditions at this intersection, increasing the number of traffic movements from Livestock Road to MD 32 is not recommended, and because a convenience store and gasoline station facility would likely draw some morning traffic off of southbound MD 32, such traffic movements would be increased by the proposed BR District.

- **The Petitioners must address whether the sight distance to the north on Livestock Road will meet the requirements.**
- **The petition appears to comply with Section 117.1.G.3.e. because of a lack of existing land uses in the vicinity.**



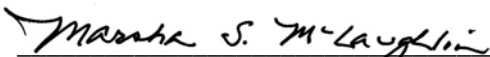
#### IV. EVALUATIONS AND CONCLUSIONS

C. Relation to the General Plan

- For the reasons noted above related to the current intersection of Livestock Road with MD 32, the proposed BR District is not in conformance with the Preservation of the Rural West Policy 3.5 to "Mitigate traffic congestion and improve travel safety in the West.
- The intersection of Livestock Road with MD 32 is not an existing commercial crossroads. This petition is contrary to Preservation of the Rural West Policy 3.10 to "Direct commercial expansion and redevelopment efforts to existing commercial crossroads in the Rural West."

#### V. RECOMMENDATION                      DENIAL

For the reasons noted above, the Department of Planning and Zoning recommends that the request to rezone the Property from RC-DEO to BR, be **DENIED**.

 06/30/09  
Marsha S. McLaughlin, Director Date

MM/JRL/jrl

**NOTE:**                      The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.